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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AGENSYS, INC. and ASTELLAS
PHARMA, INC.,

Plaintiffs,

vs.

HANS DAVID ULMERT and
NORBERT PEEKHAUS,

Defendants.

Case No. 2:24-cv-03961-CV (PDx)

**SUPPLEMENTAL DECLARATION
OF DAVID J. TSAI IN SUPPORT OF
DEFENDANTS HANS DAVID
ULMERT'S AND NORBERT
PEEKHAUS'S JOINT *EX PARTE*
APPLICATION FOR ORDER
CONTINUING CASE DEADLINES
IN SCHEDULING ORDER**

1 I, DAVID J. TSAI, hereby declare as follows:

2 1. I am a member of the State Bar of California and a Partner at the law firm
3 Pillsbury Winthrop Shaw Pittman LLP, counsel of record for Defendant Hans David
4 Ulmert (“Dr. Ulmert”) in the above-captioned action. I have personal knowledge of the
5 facts stated herein and, if called as a witness, I could and would competently testify
6 thereto.

7 2. I am making this declaration, in compliance with Local Rule 7-19.1 and
8 Sections V(G) and V(H) of the Court’s Standing Order, in connection with Dr. Ulmert’s
9 and Norbert Peekhaus’s (“Dr. Peekhaus”) (collectively, the “Defendants”) concurrently
10 filed Supplemental Brief in Support of Joint *Ex Parte* Application for Order Continuing
11 Case Deadlines in Scheduling Order.

12 3. On April 7, 2025, my colleague, John Steger, emailed lead counsel for
13 Plaintiffs, Randall E. Kay, asking Mr. Kay to “provide an update on that status of
14 Plaintiffs’ document production and their supplemental responses to Dr. Ulmert’s
15 Interrogatories and Requests for Production.” Mr. Steger noted that Mr. Kay stated that
16 he would provide these documents the previous week, but we had not yet received them.

17 4. Later that day, Mr. Kay responded, stating that “Plaintiffs have produced
18 some of the requested documents, and Plaintiffs are continuing to make their production
19 on a rolling basis. I expect more documents to be produced in response to Dr. Ulmert’s
20 document requests. While we were aiming to complete production by April 15, it may
21 take additional time to complete the production.”

22 5. Mr. Kay also stated that Plaintiffs would provide supplemental responses
23 to Dr. Ulmert’s Interrogatories and Requests for Production, but Mr. Kay did not
24 commit to a date for Plaintiffs to provide these responses.

25 6. As of April 29, 2025, Plaintiffs have not yet provided supplemental
26 responses to Dr. Ulmert’s Interrogatories and Requests for Production.

27 7. On April 14, 2025, Defendants filed an *ex parte* application for an order
28 extending the current case deadlines by an additional eight weeks (*see* Dkt. No. 118).

1 8. On April 15, 2025, Plaintiffs produced their third volume of documents, in
2 response to Dr. Ulmert's Requests for Production.

3 9. Plaintiffs' third production volume contained 539 documents. 115
4 documents in this volume were slip sheets marked "Document Not Responsive." Two
5 documents in this volume were slip sheets marked "File Could Not Be Rendered."

6 10. As of April 29, 2025, Plaintiffs have produced 576 documents (including
7 the 117 slip sheets).

8 11. Plaintiffs' third production volume is insufficient, as Plaintiffs have failed
9 to produce documents responsive to many of Dr. Ulmert's Requests, including
10 documents regarding the efforts Plaintiffs took to protect their alleged trade secrets.
11 These documents are necessary for Dr. Ulmert's expert to produce a meaningful
12 affirmative report.

13 12. As of April 29, 2025, Dr. Ulmert has produced 12,642 documents.

14 13. As of April 29, 2025, Dr. Peekhaus has produced 24 documents.

15 14. On April 15, 2025, Dr. Ulmert served a Rule 30(b)(6) deposition notice on
16 Astellas, setting the deposition for April 29.

17 15. On April 15, 2025, Dr. Ulmert served a Rule 30(b)(6) deposition notice on
18 Agensys, setting the deposition for May 1.

19 16. On April 27, 2025, at 10:22 PM, Mr. Kay emailed counsel for Dr. Ulmert,
20 informing us that "Agensys and Astellas will not be deposed this week" and that "at
21 least one of plaintiffs' witnesses is available for deposition on Friday May 16, 2025 in
22 Los Angeles."

23 17. That same night, I immediately responded to Mr. Kay, informing him that
24 Defendant Dr. Ulmert would be willing to move the deposition dates, if Plaintiffs agreed
25 to move the deadline for Dr. Ulmert's affirmative expert's report.

26 18. On April 29, 2025, Mr. Kay responded, suggesting that if Plaintiffs'
27 deposition occurred on May 16, Dr. Ulmert's expert's report could be due two weeks
28 later, on May 30. Mr. Kay noted that two deposition witnesses possibly could be

1 available on May 16, although he was still working to confirm one witness' availability
2 for that day. Mr. Kay further noted a third one potential deposition witness is in North
3 Carolina and their deposition would need to occur on Zoom.

4 19. The Parties' next deadline set by the Court, for affirmative expert reports,
5 is currently set for May 2, 2025 (*see* Dkt. No. 113).

6 20. Without Plaintiffs' documents and witness testimony, Dr. Ulmert cannot
7 proceed with preparing any meaningful affirmative expert reports. Continuing the
8 deadlines in the Scheduling Order will prevent Dr. Ulmert from being unduly
9 prejudiced.

10 21. Defendants' April 14, 2025 *ex parte* application is the second time that any
11 of the parties have requested a continuance of the case deadlines. On February 10,
12 2025, the Parties filed a Joint Stipulation to Amend the Scheduling Order because the
13 previously-set deadline for the exchange of affirmative expert reports (March 7, 2025)
14 fell approximately 2.5 months after the pleadings closed (December 19, 2024) (*see* Dkt.
15 No. 111). On February 18, 2025, the Court issued an Order Granting Stipulation to
16 Amend Scheduling Order (*see* Dkt. No. 113).

17 22. A trial date for this case yet to be set. The original trial date was vacated
18 by this Court on February 6, 2025 after reassignment of the case to the Honorable
19 Cynthia Valenzuela (*see* Dkt. Nos. 109 and 113).

20 23. My colleague, Mr. Steger, called Mr. Kay on April 29, 2025, and left a
21 voicemail to inform Plaintiffs that Defendants will be proceeding with filing a
22 supplemental brief in support of their joint *ex parte* application to continue the case
23 deadlines in the scheduling order. Mr. Steger subsequently sent an email notice to
24 Mr. Kay regarding the *ex parte* application as well.

25 24. On April 29, 2025, my colleague, Chris Garza Estrada, called the
26 Courtroom Deputy Clerk, Jessica Cortes, and left a voicemail to inform the Court that
27 Defendants would be filing the supplemental brief in support of the *ex parte* application.
28

1 I declare under penalty of perjury under the laws of the State of California and
2 the United States that the foregoing is true and correct.

3 Executed on this 29th day of April 2025, at San Francisco, California.
4

5 /s/ David Tsai

6 David J. Tsai
7
8

9 **CERTIFICATE OF SERVICE**

10 The undersigned hereby certifies that a true and correct copy of the foregoing
11 documents were caused to be served via ECF and Facsimile on April 29, 2025 to all
12 attorneys of record.

13 /s/ David J. Tsai

14 David J. Tsai
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